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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,654	02/01/2002	James A. Francois	Z1154/CG-963	1816
27868	7590	01/21/2004	EXAMINER	
JOHN F. SALAZAR MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	
			DATE MAILED: 01/21/2004	

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/061,654

Applicant(s)

FRANCOIS ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Drawings***

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 11/10/03 have been approved.

### ***Claim Objections***

2. Claims 3, 10, 16, 17 and 18 are objected to because of the following informalities: It is confusing what is comprises the invention.

The claims 17 and 18 define a closure, but the body of the claims positively recite structural elements of a fitment (said fitment having and upstanding neck...). Is the invention a closure or a closure/fitment combination? Applicant is required to state whether a subcombination or a combination is intended, and amend the claim to clarify the matter. Appropriate correction is required.

In claims 3 and 10, “said container neck” should be --said fitment neck--.

In claim 16, lines 6-7, it is incorrect that “said side wall having ...a depending annular seal”.

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***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kano et al. (Pub. US 2002/0158037 A1) in view of Bosl et al. (6,502,710).

Kano et al. disclose, in fig. 2 of the attachment which is labeled by examiner, a container comprising a closure 2 and a fitment having a neck 56. The closure comprises a top wall 4, a side wall 6, an inner sealing ring 38 having a beveled lower terminating edge 50, and a circumferentially vertically sealing rib 34 extending along an inner surface of the side wall adjacent the top wall. The spacing (DS) between an upper portion of said rib and an upper portion of an outer surface of said sealing ring 38 is less than the thickness (DF) of the fitment neck, and the spacing (DL) between lower terminating edges of said outer edge of said rib and said outer surface of said sealing ring is greater than the thickness of the container neck. Said top wall has a downwardly extending flanged portion 36 spaced between said upper portion of said rib and said outer surface of said inner sealing ring.

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Kano et al. do not disclose the sealing rib being discontinuous or comprising a plurality of spaced ribs.

Bosl et al. teach, in fig. 1, a container closure comprising a plurality of circumferentially sealing bulge 6 having a plurality of spaced ribs 9 extending along an inner surface of the side wall adjacent the top wall of the closure.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rib in the Kano et al. being discontinuous with a plurality of spaced ribs, as taught by Bosl et al., in order to improve the flexibility of the rib or to prevent a possible break of the rib when the container neck engages with the closure.

In regard to claim 15, Kano et al. disclose, in page 1, paragraphs [002) and [003], the container formed from a plastic material, and the closure form from a high density plastic material. Therefore, it would have been obvious to one having ordinary skill in the art to make the Kano et al. closure being of a harder plastic material than the fitment as claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

#### ***Response to Arguments***

5. Applicant's arguments filed 11/10/03 have been fully considered but they are not persuasive.

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In response to applicant's argument that examiner fails to establish a prima facie case of obviousness and there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kano et al. disclose a closure and a container comprising limitations as claimed as pointed out in the rejection above, except Kano et al. do not disclose the closure sealing rib 34 being discontinuous or comprising a plurality of spaced ribs. However a closure sealing member being discontinuous or comprising a plurality of spaced ribs is well known in the art, for example, Bosl et al. teach, in fig. 1, a container closure comprising a plurality of circumferentially sealing bulge 6 having a plurality of spaced ribs 9 extending along an inner surface of the side wall adjacent the top wall of the closure. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rib in the Kano et al. being discontinuous with a plurality of spaced ribs, as taught by Bosl et al., in order to improve the flexibility of the rib or to prevent a possible break of the rib when the container neck engages with the closure.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Ohmi et al. (5,673,809) and Mumford (4,697,716) teach sealing member comprising plurality of spaced ribs.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.

Lien Ngo

January 13, 2004


  
LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



Fig. 2

